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Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
 Washington, D.C. 20554

OCT 31 2001

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of )

Amendment of Section 73.202 )

Table of Allotments )

FM Broadcast Stations )

(Danville and Nonesuch, KY) )

MM Docket No. 01-169

RM-10145

To: Chief, Allocations Branch

**SUPPLEMENTAL REPLY COMMENTS IN SUPPORT OF PROPOSAL  
 TO PROVIDE NONESUCH ITS FIRST LOCAL TRANSMISSION SERVICE**

Clear Channel Broadcasting Licenses, Inc. ("CCBL"), licensee of WHIR-FM, Channel 296A, Danville, Kentucky, Facility ID No. 52309 (the "Station"), by its attorneys, hereby submits these further reply comments in support of the Notice of Proposed Rule Making, DA 01-1787, released July 27, 2001, in the above-referenced proceeding (the "Notice"). The Notice, which was issued in response to CCBL's Petition for Rule Making submitted in May 2001 (the "Petition"), recommended the changes necessary for WHIR-FM to become the first local aural transmission service for the community of Nonesuch, Kentucky (as detailed in the Notice and the Petition, the "Proposal").

No party opposed the Proposal during the initial comment round of this proceeding, which closed on September 17, 2001. However, on the last day on which reply comments could be filed in this proceeding, LM Communications, Inc. ("LM"), filed a pleading opposing the Proposal on the grounds that Nonesuch is not a community distinct from Versailles, Kentucky (the "LM Reply Comments"). 1/

1/ As a result of the late nature of LM's filing, and to the extent necessary, CCBL is accompanying these supplemental reply comments with a Motion for Leave to File Supplemental Reply Comments.

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The LM Reply Comments should not delay grant of the Proposal. LM has not demonstrated any reason for the Commission to deny community status to Nonesuch. LM's challenges to the Proposal either are based on i) LM's disregard for the substantial indicia in favor of Nonesuch's community status; ii) LM's erroneous assumption that a locality cannot be a community without a its own exclusive mailing address; or iii) LM's failure to distinguish between precedent in which a locality was not deemed a community because the proponent failed to provide the appropriate evidence and precedent in which a locality was rejected because it actually lacked the necessary attributes of a community under the Commission's objective *and* subjective criteria.

For example, in challenging whether there is a "nexus" between Nonesuch and its businesses, LM ignores the simple fact that the Chamber of Commerce for Woodford County, where both Nonesuch and Versailles are located, has affirmed that Nonesuch is a separate community with its own businesses that "respond to the needs of the residents of Nonesuch." Also, despite LM's local radio monopoly – LM owns all of the radio stations currently assigned to Woodford County 2/ – LM appears ignorant of any number of Nonesuch businesses, including those that reference Nonesuch in their names or advertising. Finally, LM's "affidavits" from a few area inhabitants (most of whom do not live in Nonesuch) cannot overcome the compelling subjective affirmation of Nonesuch's community status by more than 60 local residents – including a dozen self-identified residents of Nonesuch – already included in the record of this proceeding. Accordingly, the Proposal should be adopted and Nonesuch be allowed to obtain its first local transmission service (and the first such service provided to any community in southern Woodford County) without delay.

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2/ See BIA Research, Investing In: Radio Market Report 2001 (2001) at Metro Rank 106 (noting that LM owns WBTF(FM), Midway, Kentucky, and WCDA(FM), Versailles, Kentucky).

**The LM Reply Comments Ignore or Mischaracterize  
the Critical Facts In Favor of the Proposal**

The LM Reply Comments correctly note that all that is required for a locality to merit community status for allotment purposes is that it be a “geographically identifiable population grouping.” 3/ The LM Reply Comments also are correct not to challenge the fact that such a standard is not “too stringent” and that either objective or subjective evidence of a locality’s status as a community can be sufficient for the Commission’s allotment purposes. 4/

But the LM Reply Comments are wrong to suggest that Nonesuch does not satisfy this not “too stringent” standard. In part, this is a result of LM’s disregard of the extensive evidence already in the record of this proceeding. For example, LM claims, repeatedly, that CCBL has not demonstrated a nexus between businesses located in Nonesuch and the community’s residents. 5/ But CCBL already has submitted proof of such a nexus through a declaration from an unbiased local party well-acquainted with the region’s local businesses -- the president of the Woodford County Chamber of Commerce: 6/

Nonesuch is its own community, which has its own businesses, including a general store, the Nunsuch Grocery, *which respond to the needs of the residents of Nonesuch*. In fact, the Chamber of Commerce refers specifically to Nonesuch as a separate community in its promotional material for Woodford County.

The Chamber of Commerce Statement provides all the evidence necessary of the nexus that LM alleges is required for community status: Nonesuch businesses not only serve the needs of

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3/ LM Reply Comments at 2.

4/ CCBL Comments at 2 (citing *Kenansville, Florida*, Memorandum Opinion & Order, 10 FCC Rcd 9831, 9832).

5/ See LM Reply Comments at 3 & 4.

6/ See Comments in Support of Proposal to Provide Nonesuch Its First Local Transmission Service (“CCBL Comments”) at Exhibit 6 (the “Chamber of Commerce Statement”) (emphasis added).

Nonesuch residents, but one local business – the Nunsuch Grocery – in fact identifies that nexus through its use of an archaic spelling of the community’s own unusual name.

The latter fact also refutes LM’s allegation that CCBL has demonstrated no nexus between Nonesuch’s businesses and its residents because “none of the businesses listed by Petitioner include “Nonesuch” in their names.” 7/ Even if such “objective” nexus evidence still was required notwithstanding the clear Chamber of Commerce Statement, CCBL has identified a number of local entities that include Nonesuch in their names: in addition to the aforementioned Nunsuch Grocery, CCBL’s several photographs of the community include one of a sign for Nonesuch Frames & Things and another of a sign for Nonesuch Farm, a local business specializing in particular types of livestock. 8/ Together, the Chamber of Commerce Statement and the existence of such businesses demonstrate both under a “subjective” and “objective” standard that Nonesuch’s businesses have a nexus to that community. 9/

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7/ LM Reply Comments at 9. Of course, no Commission precedent requires that a locality must have, as a precondition for community status, a certain number of businesses that include the locality’s name in their own. Such eponymous businesses merely serve as a convenient demonstration of the link between a particular business and the community in question. *See, e.g., Kenansville, Florida*, 10 FCC Rcd at 9833. In this case, the Chamber of Commerce Statement and the statements of Nonesuch residents identifying specific local businesses render unnecessary the need for additional evidence of the nexus between Nonesuch and its businesses.

8/ *See* CCBL Comments at Exhibit 7. Specifically, Nunsuch Grocery is located at 4210 Fords Mill Road, Nonesuch Frames & Things is located at 4988 Fords Mill Road and Nonesuch Farm is located at 4750 Fords Mills Road.

9/ Incredibly, LM claims that the fact that a few of Nonesuch’s businesses also serve the region, including visitors to Nonesuch, demonstrate that Nonesuch is not a community. LM’s allegation makes no sense. Of course, a business that merely serves passersby on their way to somewhere else, and which is merely located in a particular locality by happenstance, may not have a nexus with the locality in question. But a business that actively attracts visitors or local shoppers to a locality must serve as evidence that the community is a business center of its own, and is even more deserving of community status than an insular village. *See, e.g., Kenansville, Florida*, 10 FCC Rcd at 9833. Here, CCBL has presented evidence that Irish Acres (and other Nonesuch businesses) make full use of their location in bucolic Nonesuch as part of their regional attraction. In the words of Commission precedent, such businesses do not diminish Nonesuch’s claim of community -- they enhance it. *See id.* *See also Semora, North Carolina*, 5

LM's second allegation – that there is no basis to view Nonesuch as separate from Versailles – likewise founders in the face of specific objective and subjective evidence to the contrary. LM focuses on specific community indicia that Nonesuch does not have, such as an “official” mailing address separate from Versailles. But no locality is required to demonstrate all the possible indicia of community to qualify for its own local radio station. <sup>10/</sup> For example, Commission precedent underscores that Nonesuch cannot be denied community status simply because the post office uses "Versailles" as the "formal" mailing address of Nonesuch residents. <sup>11/</sup>

What is more important than the fact that mail to Nonesuch residents may be addressed to either Nonesuch or Versailles is the fact that the community's inhabitants themselves routinely use Nonesuch in their actual mailing addresses. CCBL has submitted photographs of businesses that proudly proclaim themselves to be located in Nonesuch, Kentucky (such as the Irish Acres Gallery of Antiques -- located at 4205 Fords Mill Road -- and

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FCC Rcd 938 (¶¶ 6-8) (1990) ("Furthermore, the fact that persons from outside of Semora may participate in commercial activities in the community does not foreclose a finding of community status, but instead serves as evidence that persons from surrounding areas view Semora as a center of business activities for a surrounding area.")

<sup>10/</sup> *Semora, North Carolina*, 5 FCC Rcd 938 (¶¶ 6-8) (1990).

<sup>11/</sup> *See, e.g., Columbia City, Florida*, Memorandum Opinion & Order, 15 FCC Rcd 24725 (Allocations, 2000). In *Columbia City*, the Commission granted community status to a locality that 83 local inhabitants attested to be a community, with its own businesses, even though residents of Columbia City often had a "Lake City" mailing address. Even the Commission's *Huntington* doctrine, which is a much higher standard than that at issue here, does not consider a lack of a community-specific mailing address to be fatal to a locality's community status. *See, e.g., Faye and Richard Tuck*, 3 FCC Rcd 5374 at ¶ 36 (1988) (citing separate zip code as but part of one factor of an eight-factor analysis for separate community status). Nor should LM be allowed to manufacture other "criteria" – such a distinct and "busy" downtown – in its attempt to deny Nonesuch community status. LM Reply Comments at 6. Moreover, to the extent that speed limits are somehow relevant to community status, LM is again in error: the speed limit does reduce below 55 miles per hour in parts of Nonesuch.

Knotmuch Farm -- located at 5070 Fords Mill Road. 12/ Even LM's own evidence corroborates this point: the part of Exhibit B to the LM Reply Comments that describes the Western Fields Guest Cottage expressly notes that it "is located in a little place called Nonesuch." Moreover, the Cottage itself identifies its mailing address as "5108 Fords Mills Road, Nonesuch, Kentucky." 13/ The other part of LM's Exhibit B, which describes the Irish Acres Antiques Gallery, is no different: the title line of the web page names the Gallery as being located in Nonesuch, Kentucky -- a fact confirmed by the Gallery's own mailbox. Perhaps the best evidence of this point, however, is that the advertisement for the restaurant co-located with Irish Acres -- the Glitz -- provides directions from Versailles to Nonesuch, and notes that Versailles is roughly 9.5 miles away by road. 14/ These nearly 10 miles worth of directions make no sense if the Nonesuch is, as LM alleges, a mere "neighborhood" that is "adjacent to" Versailles. 15/

But the evidence in favor of Nonesuch's community status does not stop with Nonesuch's business community. CCBL has submitted signed statements from a dozen self-identified Nonesuch residents affirming that Nonesuch "is a separate community," which is distinct from "any other community in Woodford County," including Versailles. 16/ These statements also identify a number of local businesses as being part of the Nonesuch community. Although LM has scabbled together a few "affidavits" from persons living in the general area of

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12/ See CCBL Comments at Exhibits 5 & 7.

13/ An art studio that is located near the Cottage -- the Deborah Banta Studio -- likewise lists its address as 5108 Fords Mill Road, Nonesuch, Kentucky. See CCBL Comments at Exhibit 7.

14/ See CCBL Comments at Exhibit 4. See also *id.* at Exhibit 7.

15/ See LM Comments at 6. See also CCBL Comments at Exhibit 1 (including map showing distance from Versailles to Nonesuch).

16/ See CCBL Comments at Exhibit 12.

Nonesuch, 17/ such statements cannot be read to overcome both the clear declarations of Nonesuch's separate identity and sense of community from persons who willingly acknowledge their residence in Nonesuch *and* the fifty signatures from area residents attesting to Nonesuch's separate status. Indeed, a number of persons readily acknowledge their residence in Nonesuch whatever their "official" postal address. 18/

LM is also wrong about the relevance of particular Commission precedent. It cites *Kanarraville* and *Broadview* for the premise that a community needs to have at least a local government, a post office, and many other organizations before it can qualify as a community. 19/ However, those cases did not reject the communities in question because *Kannaraville* and *Broadview* did not have enough businesses or other organizations. Rather, those cases rejected *Kannaraville* and *Broadview* as bona fide communities because the rule making proponent did not provide the right kind of evidence. In both *Kannaraville* and *Broadview*, the Allocations Branch indicated that if each petitioner had provided "the names of any businesses which contain [the name of the alleged community] in their names" or "affidavits

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17/ In fact, most of LM's affidavits were signed by persons who live outside of the commonly accepted boundaries of Nonesuch. Nonesuch, as noted in the Petition and marked on the maps submitted by CCBL, is a community centered on the intersection of Fords Mill and Cummins Ferry Roads. The buildings associated with Nonesuch generally extend up to a mile away from that intersection, including the houses from the intersection to the end of Cummins Ferry Road on the Kentucky River. But LM actually had to go well outside of the commonly accepted boundaries of Nonesuch even to gather the few statements that it did: for example, Cleveland Young lives at 118 Georgia Street, which is located in Versailles, *see* Exhibit 1 (map identifying Young's address); Missy Cox, at 959 Fords Mill Road, and Audrey Thompson, at 2640 Fords Mill Road, each live two or more miles from the relevant intersection. The Allocations Branch should not credit statements denying the community status of Nonesuch from persons who do not even live in (or, in the case of other LM signatories, have just moved into) that community.

18/ *See* Exhibit 2. One of these persons, Robert Huffman, operates a local auto repair shop co-located with his residence, which he duly notes is located in Nonesuch.

19/ *See Kanarraville, Utah*, Report & Order, 14 FCC Rcd 15962 (Allocations, 1999); *Broadview, Montana*, Report & Order, 14 FCC Rcd 14101 (Allocations, 1999).

from residents" regarding the existence of the alleged community, it would have deemed the relevant locality a community. 20/ Those petitioners did not do so.

But CCBL has. CCBL not only has identified several "Nonesuch-named" businesses, but also has provided compelling subjective evidence, from the local Chamber of Commerce and from the community residents themselves, that Nonesuch businesses are related to Nonesuch. Also, CCBL has provided substantial information demonstrating that the county and others recognize Nonesuch as a separate geographical vicinity. Accordingly, *Kannaraville* and *Broadview* actually endorse Nonesuch's community status.

The other primary case cited by LM – *Gaviota* – also does not preclude community status for Nonesuch. 21/ In *Gaviota*, the Allocations Branch sought to use mailing addresses as a means for determining a nexus between an area's businesses and the named community in the absence of any other objective or subjective nexus evidence. 22/ But the local post office's preferred form of mailing address is obviously not the best way of determining whether a business maintains any sort of relationship with its community. Here, for example, there is extensive other evidence that demonstrates this nexus. First, CCBL has provided substantial evidence that Nonesuch businesses see themselves as just that – whether by their mailboxes (in the case of Irish Acres Gallery of Antiques) or by the addresses they list on their own advertising (in the case of The Glitz, the Deborah Banta Studio, or the chimney sweep). In fact, despite LM's best efforts, even it cannot hide the fact that businesses like the Western Fields Guest Cottage continue to refer to themselves as located within Nonesuch. Second, unlike the

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20/ See *Kannaraville*, 14 FCC Rcd at ¶ 3; *Broadview*, 14 FCC Rcd at ¶ 3.

21/ *Gaviota, California*, Report & Order, 16 FCC Rcd 1518 (Allocations, 2000). Also in that case, the petitioner could locate only a single business with the community's name in its own, unlike the several that CCBL has identified here.

22/ *Id.* at ¶ 15.



cases cited by LM, CCBL has provided specific declarations from local residents attesting to the locality's sense of community and the nexus between the community's businesses and that community.

Finally, LM's attempt to claim that Nonesuch must have all the attributes of other Woodford County communities to qualify as a community is baseless. 23/ Not every community needs its own college or beauty salon, a "busy" downtown, or even its own school. A community does not even have to have a precise population figure – as in *Semora*, an estimated 150 persons live within the generally accepted boundaries of Nonesuch. 24/ In fact, the Commission has steadfastly refused to require any specific population or level of business or other activity before it will qualify a locality as a community. 25/ What is important is that the record reflects that a locality's residents identify themselves as a community and that others – such as local businesses, chambers of commerce, or county governments – recognize the existence of that community. Nonesuch clearly satisfies that requirement.

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23/ LM Reply Comments at 3.

24/ This estimated population was developed based on 1990 U.S. Census data. Specifically, as noted, there are approximately 55 completed houses in Nonesuch. According to 1990 U.S. Census data, the population per housing unit in southern Woodford County – which includes Nonesuch and which the Census recognizes as separate from Versailles – is 2.65 persons per housing unit. *See* U.S. Census, 1990 Census of Population and Housing, Kentucky at 33. Simple multiplication projects the population of Nonesuch to be roughly 150-plus persons. (The Census also underscores the growing nature of the area, with an increase of more than 10 percent in the number of housing units in southern Woodford county.)

25/ *See Semora, North Carolina*, 5 FCC Rcd 938 (¶¶ 6-8) (1990) ("While the amount of commercial activity in the town is limited, the Commission has never established a minimum amount of commercial activity necessary to qualify an area as a community.")


## CONCLUSION

The community of Nonesuch is one of the three communities expressly advertised by the Woodford County Chamber of Commerce. It has several businesses, including Nunsuch Grocery, Nonesuch Frames & Things, a notable antiques gallery, two restaurants, an automobile repair facility, an arts studio, and a bed & breakfast. The local Chamber of Commerce has confirmed that these businesses respond to the needs of Nonesuch residents, and a number of the businesses clearly designate themselves as being located in Nonesuch. The county government formally acknowledges Nonesuch as being its own distinct locality through its recognition of a Nonesuch voting precinct and a Nonesuch branch of the county's fire department. More than a dozen residents and fifty area inhabitants have expressly confirmed that Nonesuch is a separate community. In light of such extensive objective and subjective indicia in favor of Nonesuch's community status, the totality of circumstances compels the conclusion that the community of Nonesuch deserves its own local transmission service.

Accordingly, the Commission should adopt the Proposal as promptly as possible.

Respectfully submitted,

**CLEAR CHANNEL BROADCASTING  
LICENSES, INC.**

By:   
Marissa G. Repp  
F. William LeBeau

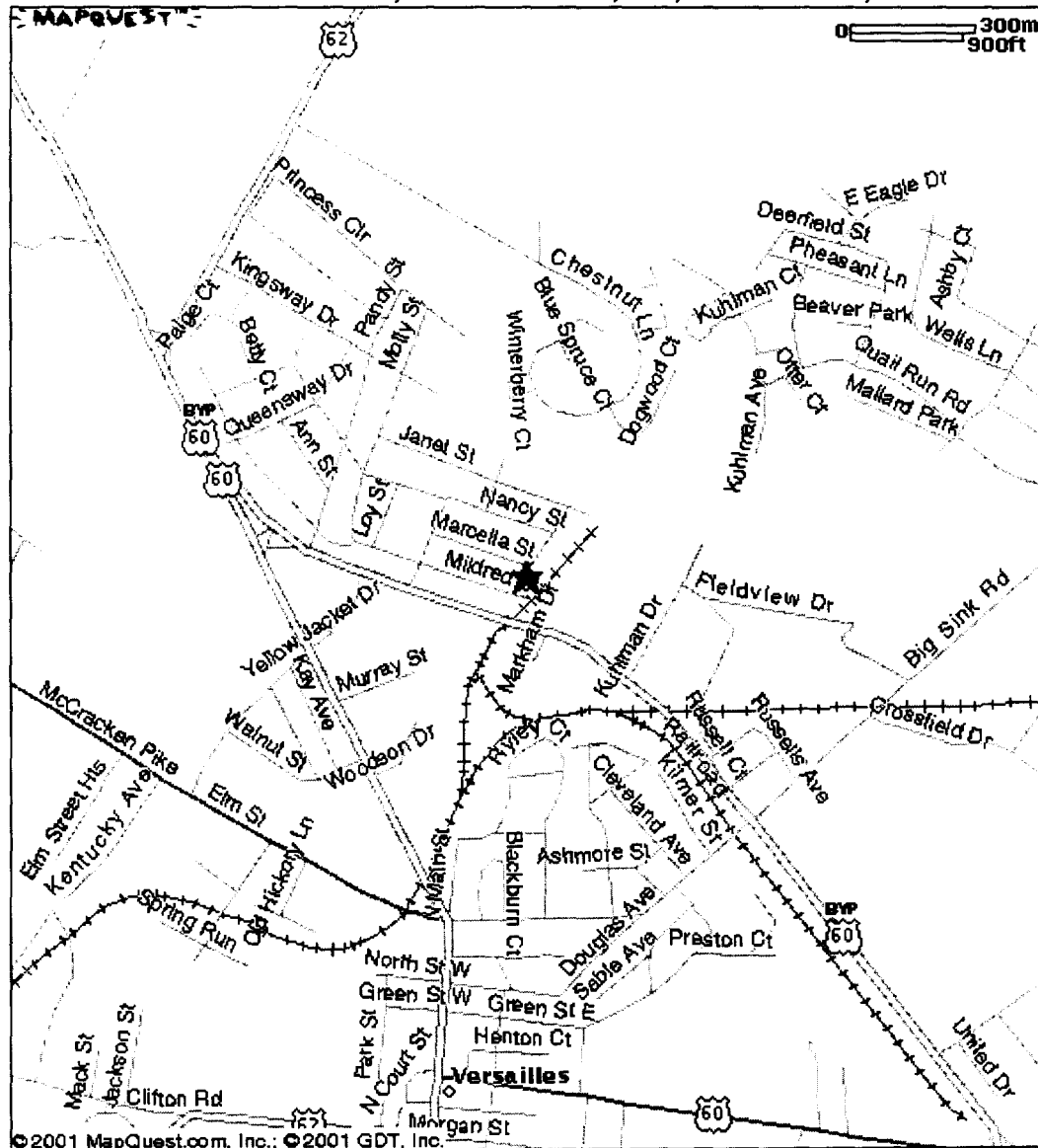
Hogan & Hartson L.L.P.  
555 Thirteenth Street, N.W.  
Washington, DC 20004-1109  
202/637-5600

Its Attorneys

October 31, 2001

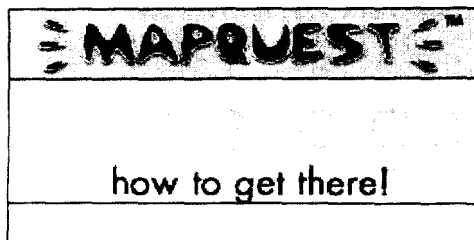
## EXHIBIT 1

118 GEORGIA ST, VERSAILLES, KY, 40383-1004, US



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This map is informational only. No representation is made or warranty given as to its content. User assumes all risk of use. MapQuest and its suppliers assume no responsibility for any loss or delay resulting from such use.

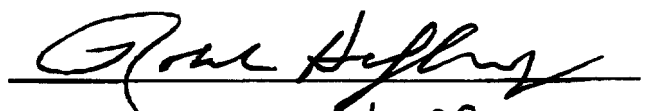
## EXHIBIT 2

**DECLARATION**

Robert Huffman, Jr., declare as follows:

1. I am a resident of the community of Nonesuch. I have lived in the community for 5 years, and have first-hand knowledge that its residents (and those of surrounding areas) recognize that Nonesuch is its own distinct community.
2. Nonesuch is a community separate and distinct from any other community in Woodford County or the surrounding area. Among its other characteristics, it has a local store and sandwich shop, as well as other retail businesses, and its own branch of the fire department. More important, we residents of Nonesuch see ourselves as residing in a separate community.
3. In fact, Nonesuch takes considerable pride in its separate identity, including its unique name, and values the sense of community among its residents.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my personal knowledge, information and belief.



Name: Robert Huffman Jr

Phone: 858-873-4552

Dated: 9/13/01

2978 Cumming Ferry Rd  
Versailles Ky. (40383)

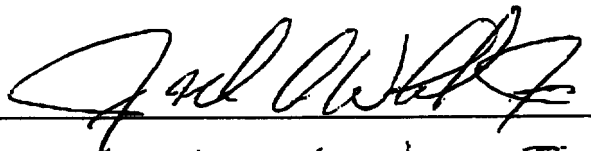
Huffman's Garage

**DECLARATION**

I, JACK A. WHITE, JR., declare as follows:

1. I am a resident of the community of Nonesuch. I have lived in the community for 2 years, and have first-hand knowledge that its residents (and those of surrounding areas) recognize that Nonesuch is its own distinct community.
2. Nonesuch is a community separate and distinct from any other community in Woodford County or the surrounding area. Among its other characteristics, it has a local store and sandwich shop, as well as other retail businesses, and its own branch of the fire department. More important, we residents of Nonesuch see ourselves as residing in a separate community.
3. In fact, Nonesuch takes considerable pride in its separate identity, including its unique name, and values the sense of community among its residents.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my personal knowledge, information and belief.



Name: JACK A. WHITE, JR.

Phone: 260 2 CUMMINGS FERRY  
VERMILION KY. 40383

859 873 4660

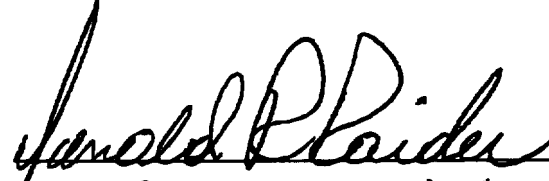
Dated: 9/13/01

**DECLARATION**

I, DONALD R RAIDER, declare as follows:

1. I am a resident of the community of Nonesuch. I have lived in the community for 32 years, and have first-hand knowledge that its residents (and those of surrounding areas) recognize that Nonesuch is its own distinct community.
2. Nonesuch is a community separate and distinct from any other community in Woodford County or the surrounding area. Among its other characteristics, it has a local store and sandwich shop, as well as other retail businesses, and its own branch of the fire department. More important, we residents of Nonesuch see ourselves as residing in a separate community.
3. In fact, Nonesuch takes considerable pride in its separate identity, including its unique name, and values the sense of community among its residents.

I hereby declare under penalty of perjury that the statements made in this declaration are true and accurate to the best of my personal knowledge, information and belief.

  
Name: 3955 Cummins Ferry Road  
Charlottesville KY 40383  
Phone: 873-5391

Dated: 9-12-2001



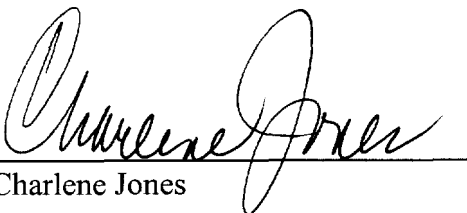
## CERTIFICATE OF SERVICE

I, Charlene Jones, hereby certify that on this 31st day of October, 2001, a copy of the foregoing Motion was sent by first-class mail, postage prepaid, to:

John A. Karousos, Chief\*  
Allocations Branch  
Policy and Rules Division  
Federal Communications Commission  
445 – 12<sup>th</sup> Street, S.W.  
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Sally A. Buckman  
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Charlene Jones

\*By Hand Delivery